

**REMARKS**

Claims 1-21 and 24-28 were presented for examination and were pending in this application. In a final Official Action dated March 14, 2008, claims 1-21 and 24-28 were rejected. Applicant thanks the Examiner for examination of the claims pending in this application and addresses the Examiner's comments below. Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections, and withdraw them.

**35 U.S.C. § 101 Rejection**

Claims 16-22 and 24-27 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Specifically, the claims allegedly read upon software modules which lack any integrated hardware execution, because they recite modules "configured to" perform certain functions. The Examiner states that the claims fail to provide a "useful, concrete and tangible result." Applicant respectfully traverses this rejection.

As a preliminary matter, Applicant notes that claims 24-27 depend upon claim 1, which is not rejected on § 101 grounds. Thus, it is assumed that the Examiner mistakenly included these claims in this rejection, as they are method claims that do not recite the "configured to" language of the rejection.

With respect to claims 16-22, Applicant has amended claim 16 to include a computer readable storage medium. Thus, Applicant respectfully submits that the claimed invention provides a useful, concrete, and tangible result and is statutory. If Examiner maintains this rejection, Applicant requests that Examiner provide a detailed explanation of why the claims are non-statutory.

**35 U.S.C. § 103 Rejection**

Claims 1-3, 6, 8-11, 14, 16-18, 21, and 24-28 stand rejected under 35 U.S.C. §103 as being unpatentable over Pisello et al. (U.S. Patent No. 5,495,607) in view of Stupek et al. (U.S. Patent No. 5,586,304). Claims 4, 12, and 19 stand rejected under §103 as being unpatentable over Pisello in view of Stupek and in further view of Fischer (U.S. Patent No. 5,694,569). Claims 5, 13, and 20 stand rejected under §103 as being unpatentable over Pisello in view of Stupek and in further view of Baker (U.S. Publication No. 2003/0233352). Claims 7, 15 and 22 stand rejected under §103 as being unpatentable over Pisello in view of Stupek and in further view of Chino (U.S. Publication No. 2002/0046207). Applicant respectfully traverses these rejections.

Claim 1 recites, *inter alia*:

“analyzing the gleaned file attributes gleaned from the examined one of the plurality of files, the gleaned file attributes having been retrieved from the at least one record associated with the examined one of the plurality of files; and  
determining whether a status of the examined one of the plurality of files is malicious, responsive to analyzing the gleaned file attributes.”

The other independent claims recite similar features. The claimed invention thus relates to analyzing attributes gleaned from a file in order to determine a status of the file.

Pisello discloses a network management system that has a virtual catalog overview of files distributed across a network domain. Examiner acknowledges that Pisello fails to expressly disclose the steps of analyzing gleaned attributes and determining a status, but states that these steps are disclosed by Stupek.

Stupek, however, neither teaches nor suggests the claimed analyzing and determining steps. Stupek merely discloses a method for use in upgrading software of a computer from an existing version to a later version.

In the section referred to by the Examiner with respect to the analyzing step (Final Office Action dated 3/14/08, pp. 4, 11), Stupek recites “The upgrade advisor 11 then retrieves upgrade information from the upgrade database 9 and performs two types of comparisons: ... whether or not **the version number of the upgrade package matches the version number of the corresponding network resource.**” Stupek, 4:5-11 (emphasis added). It appears that the Examiner relies upon this aspect of Stupek as alleging showing “analyzing the gleaned file attributes...”; i.e., comparing **the version number** of the resource to that of the upgrade package. Applicant submits that this reliance is misplaced for the following reasons.

Applicant maintains that Stupek compares only the version number of the software package *as a whole*. See, e.g., Stupek, 9:46-10:1 (version number of “NetWare OS,” “Novell Programs package”). Assuming *arguendo* that the version number can be considered an “attribute,” it is an attribute of the software package, not a “**file** attribute.” The Examiner argues “wherein software is inherently comprised of one or more files, *the gleaning of information* from the software would inherently result in *the gleaning of information* from a file.” Final Office Action at p. 11. Even if this were a true statement, it is not germane to the relevant claim language of this element – “**analyzing the gleaned file attributes**” (i.e., whether Stupek shows *analyzing* file attributes, not “gleaning information”) – the “gleaning” step is in a different element. In addition, again assuming *arguendo* that the version number can be considered an “attribute,” it is a *single* attribute, not file attributes (plural).

The determining step has been amended to recite “determining **whether a status** of the examined one of the plurality of files **is malicious.**” The Examiner cited only “analyz[ing] the level of severity of the upgrade, i.e., to determine the importance of the

upgrade” for this element prior to the present amendment. Applicant submits that Stupek did not show “determining a status” as previously recited, and clearly does not show a determination whether the status of the files is malicious. Applicant notes that the Examiner’s reliance on Stupek, 8:30-48 (in rejecting maliciousness determination of claim 24) is misplaced. Independent claims 1, 9, and 16 as amended (and claim 24 as previously presented), specifically call out a malicious status determination. Stupek recites only “determin[ing] package status (i.e., whether or not the package applies to the server, and whether the package needs to be upgraded on the server).” Stupek, 8:38-41. Thus, Stupek’s “status” determination has nothing whatsoever to do with whether a file is malicious. Furthermore, as indicated in the previous Amendment dated 12/13/2008 with respect to claim 24, the Examiner’s statements in support of the (malicious status) rejection does not provide a coherent explanation of why the claims are rejected.

Accordingly, a person of ordinary skill in the art considering the network management system of Pisello and the software upgrading technology of Stupek would not find the claimed invention obvious. Assuming *arguendo* that Pisello gleanes file attributes, Stupek does not teach any analysis or status determination based on gleaned file attributes. For at least the above reasons Applicant submits that the independent claims are patentable over Pisello and Stupek, alone or in the combination suggested by the Examiner.

The other references fail to remedy the deficiencies of Pisello and Stupek. Fischer discloses a method for protecting a volatile file using a single hash. Baker discloses a method of scanning media for licensed files. Chino discloses an information distribution system for distributing desired information answering a request on a display. None of these references teach or suggest analyzing file attributes or making a status determination as

claimed. For at least these reason Applicant submits that the independent claims are patentable over the cited references.

Claims 2-8, 10-15, 17-21, and 24-28 variously depend on claims 1, 9, and 16, which were shown above to be patentably distinguishable over the cited references, and which contain additional patentably distinguishable limitations; thus, Applicant submits that claims 2-8, 10-15, 17-21, and 24-28 also are patentably distinguishable over the cited references.

### Conclusion

In sum, Applicant respectfully submits that claims 1-21 and 24-28, as presented herein, are patentably distinguishable over the cited references. Therefore, Applicant requests reconsideration of the basis for the rejections to these claims and requests allowance of them. Should the Examiner not allow the claims, Applicant submits that the amendments herein presenting the rejected claims in better form for consideration on appeal, and thus request that they be entered. See 37 C.F.R. § 1.116 (b)(2).

In addition, Applicant respectfully invites the Examiner to contact Applicant's representative at the number provided below if the Examiner believes it will help expedite furtherance of this application.

Respectfully submitted,  
WILLIAM E. SOBEL

Dated: May 14, 2008

By: Jennifer R. Bush/  
Jennifer R. Bush, Reg. No. 50,784  
Attorney for Applicants  
Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Tel.: (650) 335-7213  
Fax: (650) 938-5200